

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW JUDGE DIVISION**

South Carolina Department of Insurance,)	
)	FINAL ORDER AND DECISION
Petitioner,)	
vs.)	DOCKET NO. 03-ALJ-09-0282-CC
)	
Ryan T. Gamble,)	
)	
Respondent.)	
)	

APPEARANCES:	Joseph D. McMaster, Esquire For Petitioner
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STATEMENT OF THE CASE

This matter is before this tribunal pursuant to S.C. Code Ann. § 38-43-130 (Supp. 2002) and S.C. Code Ann. §§ 1-23-310 et seq. (1986 & Supp. 2002). Petitioner South Carolina Department of Insurance (Department) seeks to revoke Respondent's resident insurance agent's license because of his involvement in certain fraudulent insurance transactions and his subsequent conviction for breach of trust with fraudulent intent based upon those transactions. After timely notice to the parties, a hearing of this matter was conducted on December 9, 2003, at the Administrative Law Judge Division in Columbia, South Carolina. Respondent failed to appear at the hearing without being given permission to do so.¹ Based upon the record presented at the hearing, as supplemented by leave of this tribunal, I find that Respondent's resident insurance agent's license must be revoked.

¹ On December 8, 2003, the day before the hearing in this matter, which had been scheduled some three months in advance, Respondent telephoned this tribunal and requested a continuance of the hearing on account of his son's illness. This tribunal informed Respondent that a continuance would not be granted unless and until he provided confirmation of his son's condition from a medical professional. However, Respondent did not provide this tribunal with that confirmation. Accordingly, Respondent's request for a continuance was not granted, and Respondent was not excused from appearing at the December 9, 2003 hearing in this case.

FILED

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FINDINGS OF FACT

Having carefully considered the exhibits and arguments presented at the hearing of this matter, as supplemented by leave of this tribunal,² and taking into account the credibility and accuracy of the evidence, I make the following Findings of Fact by a preponderance of the evidence:

1. Respondent holds a resident insurance agent's license issued by the Department.
2. Respondent was indicted and arrested in 2001 for breach of trust with fraudulent intent stemming from his involvement in several fraudulent insurance transactions in 1999 and 2000 while employed with American General Finance Company. Based upon these allegations, the Department opened an investigation into Respondent's conduct as an insurance agent.

3. In early 2003, the Department received information from the Senior Life Insurance Company, accusing Respondent of engaging in additional fraudulent insurance transactions while employed by the company. Based upon these allegations by the Senior Life Insurance Company and his pending criminal charges, the Department informed Respondent, by letter dated June 23, 2003, of its intent to revoke his insurance agent's license. On July 5, 2003, Respondent requested a contested case hearing before this tribunal to challenge the revocation of his license.

4. Subsequently, on September 15, 2003, Respondent pleaded guilty to breach of trust with fraudulent intent pursuant to S.C. Code Ann. § 16-13-230(B)(2) (2003). As a result of this felony conviction, Respondent was sentenced to five years of imprisonment, suspended to five years of probation, and was ordered to pay \$12,000 in restitution to American General Finance Company.

CONCLUSIONS OF LAW

Based upon the forgoing Findings of Fact, I conclude the following as a matter of law:

S.C. Code Ann. § 38-43-130(A) (Supp. 2002) provides that:

The director or his designee may place on probation, revoke, or suspend a

² At the hearing of this case, the Department presented a copy of a letter from the Fifteenth Circuit Solicitor's Office to Respondent's former employer, which confirmed Respondent's conviction for breach of trust, as evidence of Respondent's conviction. See Pet'r Ex. A. However, in order to complete the record in this case, this tribunal granted the Department leave to supplement the record in this matter with certified copies of Respondent's conviction records within ten days of the hearing. The Department provided this tribunal with certified copies of Respondent's indictment and conviction documents on December 16, 2003.

producer's³ license after ten days' notice or refuse to issue or reissue a license when it appears that a producer has been convicted of a crime involving moral turpitude, has violated this title or any regulation promulgated by the department, or has wilfully deceived or dealt unjustly with the citizens of this State.

Id. (emphasis added). The statute further states that “[f]or purposes of this section, ‘convicted’ includes a plea of guilty or a plea of nolo contendere, and the record of conviction, or a copy of it, certified by the clerk of court or by the judge in whose court the conviction occurred is conclusive evidence of the conviction.” S.C. Code Ann. § 38-43-130(B) (Supp. 2002). Thus, under the plain terms of this statute, if Respondent has pleaded guilty to a crime of moral turpitude, the Department is authorized to revoke his insurance agent’s license.

Here, Respondent has, in fact, pleaded guilty to a crime of moral turpitude. “An act in which fraud is an ingredient involves moral turpitude.” State v. Horton, 271 S.C. 413, 414, 248 S.E.2d 263, 263 (1978). Accordingly, the offense of breach of trust with fraudulent intent has been held to be a crime of moral turpitude. See, e.g., In Re Derrick, 301 S.C. 367, 392 S.E.2d 180 (1990); In Re Sipes, 297 S.C. 531, 377 S.E.2d 574 (1989). Therefore, in pleading guilty to breach of trust with fraudulent intent under Section 16-13-230(B)(2), Respondent was convicted of a crime of moral turpitude.

Under Section 38-43-130(A), the Department may seek the revocation of an insurance agent’s license when that agent has been convicted of a crime of moral turpitude. In the case at hand, by pleading guilty to breach of trust with fraudulent intent, Respondent was convicted of a crime of moral turpitude. Based upon that conviction, I find that, pursuant to Section 38-43-130, Respondent’s resident insurance agent’s license should be revoked.

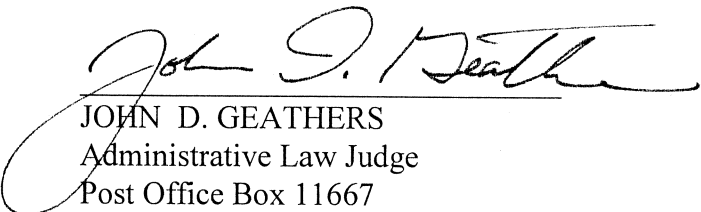
³ Under a recent revision of Title 38 of the South Carolina Code of Laws, “insurance agents” were renamed “insurance producers.” Compare S.C. Code Ann. § 38-1-20(20) (Supp. 2002) with S.C. Code Ann. § 38-1-20(20) (2002). However, for the sake of clarity and convenience, this Order will refer to Respondent as an “insurance agent.”

ORDER

Based upon the Findings of Fact and Conclusions of Law stated above,

IT IS HEREBY ORDERED that Respondent's resident insurance agent's license shall be
REVOKED.

AND IT IS SO ORDERED.


JOHN D. GEATHERS

Administrative Law Judge

Post Office Box 11667

Columbia, South Carolina 29211-1667

December 18, 2003

Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or in the Interagency Mail Service addressed to the party(ies) or their attorney(s).

This 18th day of December 2003

By: 

Judicial Law Clerk